1	AMENDMENTS TO HEALTH INSURANCE
2	COVERAGE IN STATE CONTRACTS
3	2010 GENERAL SESSION
4	STATE OF UTAH
5	
6	LONG TITLE
7	General Description:
8	This bill amends provisions related to the requirement that contractors with certain state
9	entities must provide qualified health insurance to their employees and the dependents
10	of the employees who work or reside in the state.
11	Highlighted Provisions:
12	This bill:
13	• clarifies the application of a waiting period for health insurance may not exceed the
14	first of the month following 90 days of the date of hire;
15	<ul> <li>clarifies that the qualified health insurance coverage must be offered to employees</li> </ul>
16	and dependents who work or reside in the state;
17	<ul> <li>clarifies that the qualified health insurance coverage that must be offered is a</li> </ul>
18	minimum standard and an employer may offer greater coverage;
19	<ul> <li>amends the definition of qualified health insurance coverage to clarify the standards;</li> </ul>
20	and
21	<ul> <li>amends the enforcement provisions to provide protections for good faith</li> </ul>
22	compliance.
23	Monies Appropriated in this Bill:
24	None
25	Other Special Clauses:
26	None
27	Utah Code Sections Affected:
28	AMENDS:
29	17B-2a-818.5, as enacted by Laws of Utah 2009, Chapter 13
30	19-1-206, as enacted by Laws of Utah 2009, Chapter 13
31	63A-5-205, as last amended by Laws of Utah 2009, Chapter 13

	<b>63C-9-403</b> , as enacted by Laws of Utah 2009, Chapter 13
	<b>72-6-107.5</b> , as enacted by Laws of Utah 2009, Chapter 13
	<b>79-2-404</b> , as enacted by Laws of Utah 2009, Chapter 13
Be it	enacted by the Legislature of the state of Utah:
	Section 1. Section 17B-2a-818.5 is amended to read:
	17B-2a-818.5. Contracting powers of public transit districts Health insurance
cover	rage.
	(1) For purposes of this section:
	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
34A-	2-104 who:
	(i) works at least 30 hours per calendar week; and
	(ii) meets employer eligibility waiting requirements for health care insurance which
may ı	not exceed the first day of the calendar month following 90 days from the date of hire.
	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
the co	ontract is entered into or renewed:
	(i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] $\underline{a}$
<u>healtl</u>	benefit plan and employer contribution level that provides coverage with an aggregate
<u>actua</u>	rial value at least actuarially equivalent to the plan that is offered by a health maintenance
<u>organ</u>	ization that has the largest insured commercial, non-Medicaid, enrollment of covered
lives	in the state, as determined by the Children's Health Insurance Program under [Section
<del>26-40</del>	9-106; and] Subsection 26-40-106(2)(a), in which:
	[(B) under which] (A) the employer pays at least 50% of the premium for the
emplo	oyee and the dependents of the employee[;] who reside or work in the state; and
	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
	(I) rather than the deductible and out of pocket maximum based on income levels, the
deduc	etible is \$750 and the out of pocket maximum is \$2,000;
	(II) dental coverage is not required; and
	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
apply	<u>; or</u>

63	(ii) (A) is a fadorally qualified high deductible health plan that at a minimum has
	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
64	(I) a deductible that is either:
65	[ <del>(I)</del> ] (Aa) the lowest deductible permitted for a federally qualified high deductible
66	health plan; [ <del>and</del> ] <u>or</u>
67	(Bb) a deductible that is higher than the lowest deductible permitted for a federally
68	qualified high deductible health plan, but includes an employer contribution to a health savings
69	account in a dollar amount at least equal to the dollar amount difference between the lowest
70	deductible permitted for a federally qualified high deductible plan and the deductible for the
71	employer offered federally qualified high deductible plan; and
72	(II) an out of pocket maximum that does not exceed three times the amount of the
73	annual deductible; and
74	(B) under which the employer pays 75% of the premium for the employee and the
75	dependents of the employee[; or] who work or reside in the state.
76	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
77	determined under Subsection (1)(c)(i); and]
78	[(B) under which the employer pays at least 75% of the premium of the employee and
79	the dependents of the employee.]
80	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
81	(2) Except as provided in Subsection (3), this section applies to all contracts entered
82	into by the public transit district on or after July 1, 2009, if:
83	(a) the contract is for design or construction; and
84	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
85	(ii) a subcontract is in the amount of \$750,000 or greater.
86	(3) This section does not apply if:
87	(a) the application of this section jeopardizes the receipt of federal funds;
88	(b) the contract is a sole source contract; or
89	(c) the contract is an emergency procurement.
90	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
91	or a modification to a contract, when the contract does not meet the initial threshold required
92	by Subsection (2).
93	(b) A person who intentionally uses change orders or contract modifications to

circumvent the requirements of Subsection (2) is guilty of an infraction.

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(5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit district that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employee's dependents during the duration of the contract.

- (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor shall demonstrate to the public transit district that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the contract.
- (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with [administrative rules] an ordinance adopted by the public transit district under Subsection (6).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with [administrative rules] an ordinance adopted by the public transit district under Subsection (6).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
  - (6) The public transit district shall adopt [administrative rules] ordinances:
- [(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;]
  [(b)] (a) in coordination with:
- (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- (iii) the State Building Board in accordance with Section 63A-5-205;
- (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 121 [(vi) the Legislature's Administrative Rules Review Committee; and]
- 122 [(e)] (b) which establish:
- 123 (i) the requirements and procedures a contractor must follow to demonstrate to the 124 public transit district compliance with this section which shall include:

125	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
126	(b) more than twice in any 12-month period; and
127	(B) that the actuarially equivalent determination required in Subsection (1) is met by
128	the contractor if the contractor provides the department or division with a written statement of
129	actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
130	contractor or the contractor's insurer; [and]
131	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
132	violates the provisions of this section, which may include:
133	(A) a three-month suspension of the contractor or subcontractor from entering into
134	future contracts with the public transit district upon the first violation;
135	(B) a six-month suspension of the contractor or subcontractor from entering into future
136	contracts with the public transit district upon the second violation;
137	(C) an action for debarment of the contractor or subcontractor in accordance with
138	Section 63G-6-804 upon the third or subsequent violation; and
139	(D) monetary penalties which may not exceed 50% of the amount necessary to
140	purchase qualified health insurance coverage for employees and dependents of employees of
141	the contractor or subcontractor who were not offered qualified health insurance coverage
142	during the duration of the contract[:]; and
143	(iii) a website on which the district shall post the benchmark for the qualified health
144	insurance coverage identified in Subsection (1)(c)(i).
145	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
146	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
147	employee for health care costs [not covered by insurance.] that would have been covered by
148	qualified health insurance coverage.
149	(ii) An employer has an affirmative defense to a cause of action under Subsection
150	(7)(a) if the employer:
151	(A) relied in good faith on a written statement of actuarial equivalency provided by an
152	actuary; or
153	(B) if a department or division determines that compliance with this section is not
154	required under the provisions of Subsections (3) or (4).
155	(b) An employee has a private right of action only against the employee's employer to

156	enforce the provisions of this Subsection (7).
157	(8) Any penalties imposed and collected under this section shall be deposited into the
158	Medicaid Restricted Account created in Section 26-18-402.
159	(9) The failure of a contractor or subcontractor to provide qualified health insurance
160	<u>coverage</u> as required by this section:
161	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
162	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
163	Legal and Contractual Remedies; and
164	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
165	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
166	or construction.
167	Section 2. Section 19-1-206 is amended to read:
168	19-1-206. Contracting powers of department Health insurance coverage.
169	(1) For purposes of this section:
170	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
171	34A-2-104 who:
172	(i) works at least 30 hours per calendar week; and
173	(ii) meets employer eligibility waiting requirements for health care insurance which
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174	may not exceed the first day of the calendar month following 90 days from the date of hire.
174 175	
	may not exceed the first day of the calendar month following 90 days from the date of hire.
175	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
175 176	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
<ul><li>175</li><li>176</li><li>177</li></ul>	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:
175 176 177 178	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a
175 176 177 178 179	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a health benefit plan and employer contribution level that provides coverage with an aggregate
175 176 177 178 179 180	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
175 176 177 178 179 180 181	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered
175 176 177 178 179 180 181 182	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section]
175 176 177 178 179 180 181 182 183	may not exceed the first day of the calendar month following 90 days from the date of hire.  (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.  (c) "Qualified health insurance coverage" means [a health benefit plan that] at the time the contract is entered into or renewed:  (i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a health benefit plan and employer contribution level that provides coverage with an aggregate actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance organization that has the largest insured commercial, non-Medicaid, enrollment of covered lives in the state, as determined by the Children's Health Insurance Program under [Section 26-40-106; and] Subsection 26-40-106(2)(a),in which:

187	(I) rather than the deductible and out of pocket maximum based on income levels, the
188	deductible is \$750 and the out of pocket maximum is \$2,000;
189	(II) dental coverage is not required; and
190	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
191	apply; or
192	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
193	(I) a deductible that is either:
194	[(1)] (Aa) the lowest deductible permitted for a federally qualified high deductible
195	health plan; [and] or
196	(Bb) a deductible that is higher than the lowest deductible permitted for a federally
197	qualified high deductible health plan, but includes an employer contribution to a health savings
198	account in a dollar amount at least equal to the dollar amount difference between the lowest
199	deductible permitted for a federally qualified high deductible plan and the deductible for the
200	employer offered federally qualified high deductible plan; and
201	(II) an out of pocket maximum that does not exceed three times the amount of the
202	annual deductible; and
203	(B) under which the employer pays 75% of the premium for the employee and the
204	dependents of the employee[; or] who work or reside in the state.
205	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
206	determined under Subsection (1)(c)(i); and]
207	[(B) under which the employer pays at least 75% of the premium of the employee and
208	the dependents of the employee.]
209	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
210	(2) Except as provided in Subsection (3), this section applies to all contracts entered
211	into by or delegated to the department or a division or board of the department on or after July
212	1, 2009, if:
213	(a) the contract is for design or construction; and
214	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
215	(ii) a subcontract is in the amount of \$750,000 or greater.
216	(3) This section does not apply to contracts entered into by the department or a division
217	or board of the department if:

218	(a) the application of this section jeopardizes the receipt of federal funds;
219	(b) the contract or agreement is between:
220	(i) the department or a division or board of the department; and
221	(ii) (A) another agency of the state;
222	(B) the federal government;
223	(C) another state;
224	(D) an interstate agency;
225	(E) a political subdivision of this state; or
226	(F) a political subdivision of another state;
227	(c) the executive director determines that applying the requirements of this section to a
228	particular contract interferes with the effective response to an immediate health and safety
229	threat from the environment; or
230	(d) the contract is:
231	(i) a sole source contract; or
232	(ii) an emergency procurement.
233	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
234	or a modification to a contract, when the contract does not meet the initial threshold required
235	by Subsection (2).
236	(b) A person who intentionally uses change orders or contract modifications to
237	circumvent the requirements of Subsection (2) is guilty of an infraction.
238	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
239	director that the contractor has and will maintain an offer of qualified health insurance
240	coverage for the contractor's employees and the employees' dependents during the duration of
241	the contract.
242	(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
243	demonstrate to the executive director that the subcontractor has and will maintain an offer of
244	qualified health insurance coverage for the subcontractor's employees and the employees'
245	dependents during the duration of the contract.
246	(c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
247	of the contract is subject to penalties in accordance with administrative rules adopted by the
248	department under Subsection (6).

249	(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
250	requirements of Subsection (5)(b).
251	(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
252	the duration of the contract is subject to penalties in accordance with administrative rules
253	adopted by the department under Subsection (6).
254	(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
255	requirements of Subsection (5)(a).
256	(6) The department shall adopt administrative rules:
257	(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
258	(b) in coordination with:
259	(i) a public transit district in accordance with Section 17B-2a-818.5;
260	(ii) the Department of Natural Resources in accordance with Section 79-2-404;
261	(iii) the State Building Board in accordance with Section 63A-5-205;
262	(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
263	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
264	(vi) the Legislature's Administrative Rules Review Committee; and
265	(c) which establish:
266	(i) the requirements and procedures a contractor must follow to demonstrate to the
267	public transit district compliance with this section which shall include:
268	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
269	(b) more than twice in any 12-month period; and
270	(B) that the actuarially equivalent determination required in Subsection (1) is met by
271	the contractor if the contractor provides the department or division with a written statement of
272	actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
273	contractor or the contractor's insurer; [and]
274	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
275	violates the provisions of this section, which may include:
276	(A) a three-month suspension of the contractor or subcontractor from entering into
277	future contracts with the state upon the first violation;
278	(B) a six-month suspension of the contractor or subcontractor from entering into future
279	contracts with the state upon the second violation;

280	(C) an action for debarment of the contractor or subcontractor in accordance with
281	Section 63G-6-804 upon the third or subsequent violation; and
282	(D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
283	of the amount necessary to purchase qualified health insurance coverage for an employee and
284	the dependents of an employee of the contractor or subcontractor who was not offered qualified
285	health insurance coverage during the duration of the contract[-]; and
286	(iii) a website on which the department shall post the benchmark for the qualified
287	health insurance coverage identified in Subsection (1)(c)(i).
288	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
289	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
290	employee for health care costs [not covered by insurance.] that would have been covered by
291	qualified health insurance coverage.
292	(ii) An employer has an affirmative defense to a cause of action under Subsection
293	(7)(a) if the employer:
294	(A) relied in good faith on a written statement of actuarial equivalency provided by an
295	actuary; or
296	(B) if the department determines that compliance with this section is not required under
297	the provisions of Subsections (3) or (4).
298	(b) An employee has a private right of action only against the employee's employer to
299	enforce the provisions of this Subsection (7).
300	(8) Any penalties imposed and collected under this section shall be deposited into the
301	Medicaid Restricted Account created in Section 26-18-402.
302	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
303	<u>coverage</u> as required by this section:
304	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
305	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
306	Legal and Contractual Remedies; and
307	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
308	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
309	or construction.
310	Section 3 Section 63A-5-205 is amended to read:

311	63A-5-205. Contracting powers of director Retainage Health insurance
312	coverage.
313	(1) As used in this section:
314	(a) "Capital developments" has the same meaning as provided in Section 63A-5-104.
315	(b) "Capital improvements" has the same meaning as provided in Section 63A-5-104.
316	(c) "Employee" means an "employee," "worker," or "operative" as defined in Section
317	34A-2-104 who:
318	(i) works at least 30 hours per calendar week; and
319	(ii) meets employer eligibility waiting requirements for health care insurance which
320	may not exceed the first day of the calendar month following 90 days from the date of hire.
321	(d) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
322	(e) "Qualified health insurance coverage" means [a health benefit plan that] at the time
323	the contract is entered into or renewed:
324	(i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] $\underline{a}$
325	health benefit plan and employer contribution level that provides coverage with an aggregate
326	actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
327	organization that has the largest insured commercial, non-Medicaid, enrollment of covered
328	lives in the state, as determined by the Children's Health Insurance Program under [Section
329	<del>26-40-106; and</del> ] <u>Subsection 26-40-106(2)(a) in which:</u>
330	[(B) under which] (A) the employer pays at least 50% of the premium for the
331	employee and the dependents of the employee[;] who work and reside in the state; and
332	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(e)(i):
333	(I) rather than the deductible and out of pocket maximum based on income levels, the
334	deductible is \$750 and the out of pocket maximum is \$2,000;
335	(II) dental coverage is not required; and
336	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
337	apply; or
338	(ii) (A) is a federally qualified high deductible health plan that, at a minimim, has:
339	(I) a deductible that is either:
340	[(H)] (Aa) the lowest deductible permitted for a federally qualified high deductible
341	health plan; [and] or

(Bb) a deductible that is higher than the lowest deductible permitted for a federally
qualified high deductible health plan, but includes an employer contribution to a health savings
account in a dollar amount at least equal to the dollar amount difference between the lowest
deductible permitted for a federally qualified high deductible plan and the deductible for the
employer offered federally qualified high deductible plan; and
(II) an out of pocket maximum that does not exceed three times the amount of the
annual deductible; and
(B) under which the employer pays 75% of the premium for the employee and the
dependents of the employee[; or] who work or reside in the state.
[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
determined under Subsection (1)(e)(i); and]
[(B) under which the employer pays at least 75% of the premium of the employee and
the dependents of the employee.]
(f) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
(2) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the director may
(a) subject to Subsection (3), enter into contracts for any work or professional services
which the division or the State Building Board may do or have done; and
(b) as a condition of any contract for architectural or engineering services, prohibit the
architect or engineer from retaining a sales or agent engineer for the necessary design work.
(3) (a) Except as provided in Subsection (3)(b), this Subsection (3) applies to all
contracts entered into by the division or the State Building Board on or after July 1, 2009, if:
(i) the contract is for design or construction; and
(ii) (A) the prime contract is in the amount of \$1,500,000 or greater; or
(B) a subcontract is in the amount of \$750,000 or greater.
(b) This Subsection (3) does not apply:
(i) if the application of this Subsection (3) jeopardizes the receipt of federal funds;
(ii) if the contract is a sole source contract;
(iii) if the contract is an emergency procurement; or
(iv) to a change order as defined in Section 63G-6-102, or a modification to a contract,
when the contract does not meet the threshold required by Subsection (3)(a).
(c) A person who intentionally uses change orders or contract modifications to

circumvent the requirements of Subsection (3)(a) is guilty of an infraction.

(d) (i) A contractor subject to Subsection (3)(a) shall demonstrate to the director that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents.

- (ii) If a subcontractor of the contractor is subject to Subsection (3)(a), the contractor shall demonstrate to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents.
- (e) (i) (A) A contractor who fails to meet the requirements of Subsection (3)(d)(i) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).
- (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (3)(d)(ii).
- (ii) (A) A subcontractor who fails to meet the requirements of Subsection (3)(d)(ii) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (3)(f).
- (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (3)(d)(i).
  - (f) The division shall adopt administrative rules:
  - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 393 (ii) in coordination with:

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- 394 (A) the Department of Environmental Quality in accordance with Section 19-1-206;
- 395 (B) the Department of Natural Resources in accordance with Section 79-2-404;
- 396 (C) a public transit district in accordance with Section 17B-2a-818.5;
- 397 (D) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 398 (E) the Department of Transportation in accordance with Section 72-6-107.5; and
- 399 (F) the Legislature's Administrative Rules Review Committee; and
- 400 (iii) which establish:
- 401 (A) the requirements and procedures a contractor must follow to demonstrate to the 402 director compliance with this Subsection (3) which shall include:
- 403 (I) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or

404	(b) more than twice in any 12-month period; and
405	(II) that the actuarially equivalent determination required in Subsection (1) is met by
406	the contractor if the contractor provides the department or division with a written statement of
407	actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
408	contractor or the contractor's insurer; [and]
409	(B) the penalties that may be imposed if a contractor or subcontractor intentionally
410	violates the provisions of this Subsection (3), which may include:
411	(I) a three-month suspension of the contractor or subcontractor from entering into
412	future contracts with the state upon the first violation;
413	(II) a six-month suspension of the contractor or subcontractor from entering into future
414	contracts with the state upon the second violation;
415	(III) an action for debarment of the contractor or subcontractor in accordance with
416	Section 63G-6-804 upon the third or subsequent violation; and
417	(IV) monetary penalties which may not exceed 50% of the amount necessary to
418	purchase qualified health insurance coverage for an employee and the dependents of an
419	employee of the contractor or subcontractor who was not offered qualified health insurance
420	coverage during the duration of the contract[-]; and
421	(C) a website on which the department shall post the benchmark for the qualified
422	health insurance coverage identified in Subsection (1)(e)(i).
423	(g) (i) In addition to the penalties imposed under Subsection (3)(f)(iii), a contractor or
424	subcontractor who intentionally violates the provisions of this section shall be liable to the
425	employee for health care costs [not covered by insurance.] that would have been covered by
426	qualified health insurance coverage.
427	(ii) An employer has an affirmative defense to a cause of action under Subsection (g)(i)
428	if the employer:
429	(A) relied in good faith on a written statement of actuarial equivalency provided by an
430	actuary; or
431	(B) if the department determines that compliance with this section is not required under
432	the provisions of Subsection (3)(b).
433	[(ii)] (iii) An employee has a private right of action only against the employee's
434	employer to enforce the provisions of this Subsection (3)(g).

435	(h) Any penalties imposed and collected under this section shall be deposited into the
436	Medicaid Restricted Account created by Section 26-18-402.
437	(i) The failure of a contractor or subcontractor to provide qualified health insurance
438	coverage as required by this section:
439	(i) may not be the basis for a protest or other action from a prospective bidder, offeror,
440	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
441	Legal and Contractual Remedies; and
442	(ii) may not be used by the procurement entity or a prospective bidder, offeror, or
443	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
444	or construction.
445	(4) The judgment of the director as to the responsibility and qualifications of a bidder
446	is conclusive, except in case of fraud or bad faith.
447	(5) The division shall make all payments to the contractor for completed work in
448	accordance with the contract and pay the interest specified in the contract on any payments that
449	are late.
450	(6) If any payment on a contract with a private contractor to do work for the division or
451	the State Building Board is retained or withheld, it shall be retained or withheld and released as
452	provided in Section 13-8-5.
453	Section 4. Section <b>63C-9-403</b> is amended to read:
454	63C-9-403. Contracting power of executive director Health insurance coverage
455	(1) For purposes of this section:
456	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
457	34A-2-104 who:
458	(i) works at least 30 hours per calendar week; and
459	(ii) meets employer eligibility waiting requirements for health care insurance which
460	may not exceed the first of the calendar month following 90 days from the date of hire.
461	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
462	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
463	the contract is entered into or renewed:
464	(i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a
465	health benefit plan and employer contribution level that provides coverage with an aggregate

100	actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
167	organization that has the largest insured commercial, non-Medicaid, enrollment of covered
168	lives in the state, as determined by the Children's Health Insurance Program under [Section
169	<del>26-40-106; and</del> ] <u>Subsection 26-40-106(2)(a), in which:</u>
170	[(B) under which] (A) the employer pays at least 50% of the premium for the
171	employee and the dependents of the employee[;] who work or reside in the state; and
172	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
173	(I) rather than the deductible and out of pocket maximum based on income levels, the
174	deductible is \$750 and the out of pocket maximum is \$2,000;
175	(II) dental coverage is not required; and
176	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
177	apply; or
178	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
179	(I) a deductible that is either:
180	[(1)] (Aa) the lowest deductible permitted for a federally qualified high deductible
181	health plan; [and] or
182	(Bb) a deductible that is higher than the lowest deductible permitted for a federally
183	qualified high deductible health plan, but includes an employer contribution to a health savings
184	account in a dollar amount at least equal to the dollar amount difference between the lowest
185	deductible permitted for a federally qualified high deductible plan and the deductible for the
186	employer offered federally qualified high deductible plan; and
187	(II) an out of pocket maximum that does not exceed three times the amount of the
188	annual deductible; and
189	(B) under which the employer pays 75% of the premium for the employee and the
190	dependents of the employee[; or] who work or reside in the state.
191	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
192	determined under Subsection (1)(c)(i); and]
193	[(B) under which the employer pays at least 75% of the premium of the employee and
194	the dependents of the employee.]
195	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
196	(2) Except as provided in Subsection (3), this section applies to all contracts entered

497	into by the board or on behalf of the board on or after July 1, 2009, if:
498	(a) the contract is for design or construction; and
499	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
500	(ii) a subcontract is in the amount of \$750,000 or greater.
501	(3) This section does not apply if:
502	(a) the application of this section jeopardizes the receipt of federal funds;
503	(b) the contract is a sole source contract; or
504	(c) the contract is an emergency procurement.
505	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
506	or a modification to a contract, when the contract does not meet the initial threshold required
507	by Subsection (2).
508	(b) A person who intentionally uses change orders or contract modifications to
509	circumvent the requirements of Subsection (2) is guilty of an infraction.
510	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive
511	director that the contractor has and will maintain an offer of qualified health insurance
512	coverage for the contractor's employees and the employees' dependents during the duration of
513	the contract.
514	(b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
515	shall demonstrate to the executive director that the subcontractor has and will maintain an offer
516	of qualified health insurance coverage for the subcontractor's employees and the employees'
517	dependents during the duration of the contract.
518	(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
519	the duration of the contract is subject to penalties in accordance with administrative rules
520	adopted by the division under Subsection (6).
521	(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
522	requirements of Subsection (5)(b).
523	(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
524	the duration of the contract is subject to penalties in accordance with administrative rules
525	adopted by the department under Subsection (6).
526	(B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
527	requirements of Subsection (5)(a).

528	(6) The department shall adopt administrative rules:
529	(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
530	(b) in coordination with:
531	(i) the Department of Environmental Quality in accordance with Section 19-1-206;
532	(ii) the Department of Natural Resources in accordance with Section 79-2-404;
533	(iii) the State Building Board in accordance with Section 63A-5-205;
534	(iv) a public transit district in accordance with Section 17B-2a-818.5;
535	(v) the Department of Transportation in accordance with Section 72-6-107.5; and
536	(vi) the Legislature's Administrative Rules Review Committee; and
537	(c) which establish:
538	(i) the requirements and procedures a contractor must follow to demonstrate to the
539	executive director compliance with this section which shall include:
540	(A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
541	(b) more than twice in any 12-month period; and
542	(B) that the actuarially equivalent determination required in Subsection (1) is met by
543	the contractor if the contractor provides the department or division with a written statement of
544	actuarial equivalency from either the Utah Insurance Department or an actuary selected by the
545	contractor or the contractor's insurer; [and]
546	(ii) the penalties that may be imposed if a contractor or subcontractor intentionally
547	violates the provisions of this section, which may include:
548	(A) a three-month suspension of the contractor or subcontractor from entering into
549	future contracts with the state upon the first violation;
550	(B) a six-month suspension of the contractor or subcontractor from entering into future
551	contracts with the state upon the second violation;
552	(C) an action for debarment of the contractor or subcontractor in accordance with
553	Section 63G-6-804 upon the third or subsequent violation; and
554	(D) monetary penalties which may not exceed 50% of the amount necessary to
555	purchase qualified health insurance coverage for employees and dependents of employees of
556	the contractor or subcontractor who were not offered qualified health insurance coverage
557	during the duration of the contract[-]; and
558	(iii) a website on which the department shall post the benchmark for the qualified

559	health insurance coverage identified in Subsection (1)(c)(i).
560	(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
561	subcontractor who <u>intentionally</u> violates the provisions of this section shall be liable to the
562	employee for health care costs [not covered by insurance.] that would have been covered by
563	qualified health insurance coverage.
564	(ii) An employer has an affirmative defense to a cause of action under Subsection
565	(7)(a) if the employer:
566	(A) relied in good faith on a written statement of actuarial equivalency provided by an
567	actuary; or
568	(B) if the department determines that compliance with this section is not required under
569	the provisions of Subsections (3) or (4).
570	(b) An employee has a private right of action only against the employee's employer to
571	enforce the provisions of this Subsection (7).
572	(8) Any penalties imposed and collected under this section shall be deposited into the
573	Medicaid Restricted Account created in Section 26-18-402.
574	(9) The failure of a contractor or subcontractor to provide qualified health insurance
575	<u>coverage</u> as required by this section:
576	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
577	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
578	Legal and Contractual Remedies; and
579	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
580	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
581	or construction.
582	Section 5. Section <b>72-6-107.5</b> is amended to read:
583	72-6-107.5. Construction of improvements of highway Contracts Health
584	insurance coverage.
585	(1) For purposes of this section:
586	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section
587	34A-2-104 who:
588	(i) works at least 30 hours per calendar week; and
589	(ii) meets employer eligibility waiting requirements for health care insurance which

590	may not exceed the first day of the calendar month following 90 days from the date of hire.
591	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
592	(c) "Qualified health insurance coverage" means [a health benefit plan that] at the time
593	the contract is entered into or renewed:
594	(i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a
595	health benefit plan and employer contribution level that provides coverage with an aggregate
596	actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
597	organization that has the largest insured commercial, non-Medicaid, enrollment of covered
598	lives in the state, as determined by the Children's Health Insurance Program under [Section
599	<del>26-40-106; and</del> ] <u>Subsection 26-40-106(2)(a), in which:</u>
600	[(B) under which] (A) the employer pays at least 50% of the premium for the
601	employee and the dependents of the employee[;] who work or reside in the state; and
602	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
603	(I) rather than the deductible and out of pocket maximum based on income levels, the
604	deductible is \$750 and the out of pocket maximum is \$2,000;
605	(II) dental coverage is not required; and
606	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
607	apply; or
608	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
609	(I) a deductible that is either:
610	[ <del>(I)</del> ] (Aa) the lowest deductible permitted for a federally qualified high deductible
611	health plan; [and] or
612	(Bb) a deductible that is higher than the lowest deductible permitted for a federally
613	qualified high deductible health plan, but includes an employer contribution to a health savings
614	account in a dollar amount at least equal to the dollar amount difference between the lowest
615	deductible permitted for a federally qualified high deductible plan and the deductible for the
616	employer offered federally qualified high deductible plan; and
617	(II) an out of pocket maximum that does not exceed three times the amount of the
618	annual deductible; and
619	(B) under which the employer pays 75% of the premium for the employee and the
620	dependents of the employee[; or] who reside or work in the state.

621	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
622	determined under Subsection (1)(c)(i); and]
623	[(B) under which the employer pays at least 75% of the premium of the employee and
624	the dependents of the employee.]
625	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
626	(2) Except as provided in Subsection (3), this section applies to all contracts entered
627	into by the department on or after July 1, 2009, for construction or design of highways if:
628	(a) the prime contract is in the amount of \$1,500,000 or greater; or
629	(b) a subcontract is in the amount of \$750,000 or greater.
630	(3) This section does not apply if:
631	(a) the application of this section jeopardizes the receipt of federal funds;
632	(b) the contract is a sole source contract; or
633	(c) the contract is an emergency procurement.
634	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
635	or a modification to a contract, when the contract does not meet the initial threshold required
636	by Subsection (2).
637	(b) A person who intentionally uses change orders or contract modifications to
638	circumvent the requirements of Subsection (2) is guilty of an infraction.
639	(5) (a) A contractor subject to Subsection (2) shall demonstrate to the department that
640	the contractor has and will maintain an offer of qualified health insurance coverage for the
641	contractor's employees and the employees' dependents during the duration of the contract.
642	(b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
643	demonstrate to the department that the subcontractor has and will maintain an offer of qualified
644	health insurance coverage for the subcontractor's employees and the employees' dependents
645	during the duration of the contract.
646	(c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
647	the duration of the contract is subject to penalties in accordance with administrative rules
648	adopted by the department under Subsection (6).
649	(B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
650	requirements of Subsection (5)(b).
651	(ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during

the duration of the contract is subject to penalties in accordance with administrative rules

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653 adopted by the department under Subsection (6). 654 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the 655 requirements of Subsection (5)(a). 656 (6) The department shall adopt administrative rules: 657 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; 658 (b) in coordination with: 659 (i) the Department of Environmental Quality in accordance with Section 19-1-206; 660 (ii) the Department of Natural Resources in accordance with Section 79-2-404; 661 (iii) the State Building Board in accordance with Section 63A-5-205; 662 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; 663 (v) a public transit district in accordance with Section 17B-2a-818.5; and 664 (vi) the Legislature's Administrative Rules Review Committee; and 665 (c) which establish: 666 (i) the requirements and procedures a contractor must follow to demonstrate to the 667 department compliance with this section which shall include: 668 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or 669 (b) more than twice in any 12-month period; and 670 (B) that the actuarially equivalent determination required in Subsection (1) is met by 671 the contractor if the contractor provides the department or division with a written statement of 672 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the 673 contractor or the contractor's insurer; [and] 674 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally 675 violates the provisions of this section, which may include: 676 (A) a three-month suspension of the contractor or subcontractor from entering into 677 future contracts with the state upon the first violation; 678 (B) a six-month suspension of the contractor or subcontractor from entering into future 679 contracts with the state upon the second violation; 680 (C) an action for debarment of the contractor or subcontractor in accordance with 681 Section 63G-6-804 upon the third or subsequent violation; and 682 (D) monetary penalties which may not exceed 50% of the amount necessary to

683	purchase qualified health insurance coverage for an employee and a dependent of the employee
684	of the contractor or subcontractor who was not offered qualified health insurance coverage
685	during the duration of the contract[-]; and
686	(iii) a website on which th department shall post the benchmark for the qualified health
687	insurance coverage identified in Subsection (1)(c)(i).
688	(7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or
689	subcontractor who intentionally violates the provisions of this section shall be liable to the
690	employee for health care costs [not covered by insurance.] that would have been covered by
691	qualified health insurance coverage.
692	(ii) An employer has an affirmative defense to a cause of action under Subsection
693	(7)(a) if the employer:
694	(A) relied in good faith on a written statement of actuarial equivalency provided by an
695	actuary; or
696	(B) if the department determines that compliance with this section is not required under
697	the provisions of Subsections (3) or (4).
698	(b) An employee has a private right of action only against the employee's employer to
699	enforce the provisions of this Subsection (7).
700	(8) Any penalties imposed and collected under this section shall be deposited into the
701	Medicaid Restricted Account created in Section 26-18-402.
702	(9) The failure of a contractor or subcontractor to provide qualified health insurance
703	coverage as required by this section:
704	(a) may not be the basis for a protest or other action from a prospective bidder, offeror,
705	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
706	Legal and Contractual Remedies; and
707	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
708	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
709	or construction.
710	Section 6. Section <b>79-2-404</b> is amended to read:
711	79-2-404. Contracting powers of department Health insurance coverage.
712	(1) For purposes of this section:
713	(a) "Employee" means an "employee," "worker," or "operative" as defined in Section

/14	34A-2-104 Wno:
715	(i) works at least 30 hours per calendar week; and
716	(ii) meets employer eligibility waiting requirements for health care insurance which
717	may not exceed the first day of the calendar month following 90 days from the date of hire.
718	(b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.
719	(c) "Qualified health insurance coverage" means a [health benefit plan that] at the time
720	the contract is entered into or renewed:
721	(i) [(A) provides coverage that is actuarially equivalent to the current benefit plan] a
722	health benefit plan and employer contribution level that provides coverage with an aggregate
723	actuarial value at least actuarially equivalent to the plan that is offered by a health maintenance
724	organization that has the largest insured commercial, non-Medicaid, enrollment of covered
725	lives in the state, as determined by the Children's Health Insurance Program under [Section
726	<del>26-40-106; and</del> ] <u>Subsection 26-40-106(2)(a) in which:</u>
727	[(B) under which] (A) the employer pays at least 50% of the premium for the
728	employee and the dependents of the employee[;] who reside or work in the state; and
729	(B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):
730	(I) rather than the deductible and out of pocket maximum based on income levels, the
731	deductible is \$750 and the out of pocket maximum is \$2,000;
732	(II) dental coverage is not required; and
733	(III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
734	apply; or
735	(ii) (A) is a federally qualified high deductible health plan that, at a minimum, has:
736	(I) a deductible that is either:
737	[(1)] (Aa) the lowest deductible permitted for a federally qualified high deductible
738	health plan; [and] or
739	(Bb) a deductible that is higher than the lowest deductible permitted for a federally
740	qualified high deductible health plan, but includes an employer contribution to a health savings
741	account in a dollar amount at least equal to the dollar amount difference between the lowest
742	deductible permitted for a federally qualified high deductible plan and the deductible for the
743	employer offered federally qualified high deductible plan; and
744	(II) an out of pocket maximum that does not exceed three times the amount of the

745	annual deductible; and
746	(B) under which the employer pays 75% of the premium for the employee and the
747	dependents of the employee[; or] who work or reside in the state.
748	[(iii) (A) provides coverage that is actuarially equivalent to 75% of the benefit plan
749	determined under Subsection (1)(c)(i); and]
750	[(B) under which the employer pays at least 75% of the premium of the employee and
751	the dependents of the employee.]
752	(d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.
753	(2) Except as provided in Subsection (3), this section applies to all contracts entered
754	into by, or delegated to, the department or a division, board, or council of the department on or
755	after July 1, 2009, if:
756	(a) the contract is for design or construction; and
757	(b) (i) the prime contract is in the amount of \$1,500,000 or greater; or
758	(ii) a subcontract is in the amount of \$750,000 or greater.
759	(3) This section does not apply to contracts entered into by the department or a
760	division, board, or council of the department if:
761	(a) the application of this section jeopardizes the receipt of federal funds;
762	(b) the contract or agreement is between:
763	(i) the department or a division, board, or council of the department; and
764	(ii) (A) another agency of the state;
765	(B) the federal government;
766	(C) another state;
767	(D) an interstate agency;
768	(E) a political subdivision of this state; or
769	(F) a political subdivision of another state; or
770	(c) the contract or agreement is:
771	(i) for the purpose of disbursing grants or loans authorized by statute;
772	(ii) a sole source contract; or
773	(iii) an emergency procurement.
774	(4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
775	or a modification to a contract, when the contract does not meet the initial threshold required

by Subsection (2).

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- 777 (b) A person who intentionally uses change orders or contract modifications to 778 circumvent the requirements of Subsection (2) is guilty of an infraction.
  - (5) (a) A contractor subject to Subsection (2)(b)(i) shall demonstrate to the department that the contractor has and will maintain an offer of qualified health insurance coverage for the contractor's employees and the employees' dependents during the duration of the contract.
    - (b) If a subcontractor of the contractor is subject to Subsection (2)(b)(ii), the contractor shall demonstrate to the department that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the contract.
    - (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
    - (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the requirements of Subsection (5)(b).
    - (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).
  - (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the requirements of Subsection (5)(a).
- 796 (6) The department shall adopt administrative rules:
- 797 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 798 (b) in coordination with:
- 799 (i) the Department of Environmental Quality in accordance with Section 19-1-206;
- 800 (ii) a public transit district in accordance with Section 17B-2a-818.5;
- 801 (iii) the State Building Board in accordance with Section 63A-5-205;
- 802 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- (vi) the Legislature's Administrative Rules Review Committee; and
- 805 (c) which establish:
- 806 (i) the requirements and procedures a contractor must follow to demonstrate

807 compliance with this section to the department which shall include: 808 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or 809 (b) more than twice in any 12-month period; and 810 (B) that the actuarially equivalent determination required in Subsection (1) is met by 811 the contractor if the contractor provides the department or division with a written statement of 812 actuarial equivalency from either the Utah Insurance Department or an actuary selected by the 813 contractor or the contractor's insurer; and 814 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include: 815 816 (A) a three-month suspension of the contractor or subcontractor from entering into 817 future contracts with the state upon the first violation; (B) a six-month suspension of the contractor or subcontractor from entering into future 818 819 contracts with the state upon the second violation; 820 (C) an action for debarment of the contractor or subcontractor in accordance with 821 Section 63G-6-804 upon the third or subsequent violation; [and] 822 (D) monetary penalties which may not exceed 50% of the amount necessary to 823 purchase qualified health insurance coverage for an employee and a dependent of an employee 824 of the contractor or subcontractor who was not offered qualified health insurance coverage 825 during the duration of the contract[-]; and 826 (iii) a website on which the department shall post the benchmark for the qualified 827 health insurance coverage identified in Subsection (1)(c)(i). 828 (7) (a) (i) In addition to the penalties imposed under Subsection (6), a contractor or 829 subcontractor who intentionally violates the provisions of this section shall be liable to the 830 employee for health care costs [not covered by insurance.] that would have been covered by 831 qualified health insurance coverage. 832 (ii) An employer has an affirmative defense to a cause of action under Subsection 833 (7)(a) if the employer: 834 (A) relied in good faith on a written statement of actuarial equivalency provided by an 835 actuary; or 836 (B) if the department determines that compliance with this section is not required under 837 the provisions of Subsections (3) or (4).

838	(b) An employee has a private right of action only against the employee's employer to
839	enforce the provisions of this Subsection (7).
840	(8) Any penalties imposed and collected under this section shall be deposited into the
841	Medicaid Restricted Account created in Section 26-18-402.
842	(9) The failure of a contractor or subcontractor to provide <u>qualified</u> health insurance
843	<u>coverage</u> as required by this section:
844	(a) may not be the basis for a protest or other action from a prospective bidder, offeror
845	or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
846	Legal and Contractual Remedies; and
847	(b) may not be used by the procurement entity or a prospective bidder, offeror, or
848	contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
849	or construction.